

**RECORDED AT THE REQUEST OF
AND RETURN TO:**

City of Lafayette
Engineering Services Division
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, California 94549
Attn: City Engineer

DEFERRED IMPROVEMENT AGREEMENT

This Deferred Improvement Agreement is entered into as of this ____ day of _____, 2008, by and between the City of Lafayette, a municipal corporation ("City") and Desmond and Kathryn Allen(collectively, "Owner"). City and Owner are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

A. Owner owns certain real property more commonly known as 567 Merriewood Drive, Lafayette, California, Assessor Parcel Number 237-280-0017 and more specifically described in Exhibit "A" attached hereto and incorporated herein by reference ("Property").

B. As a remedy for the removal of an existing sidewalk on the southwest corner of Merriewood Drive and Sandalwood Court, the City requires the restoration of frontage sidewalk improvements from the property's driveway on Sandalwood Court to the southern end of the Sandalwood Drive curb return on Merriewood Drive ("Improvements").

C. Without admission of fault the Parties desire to resolve any and all disputes between them regarding the improvements. The City and Owner are willing to agree to a deferral of these Improvements in accordance with the terms and conditions hereafter set forth.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained in this Agreement the Parties agree as follows:

1. Improvements. Subject to the conditions set forth herein, the City agrees to defer restoration of Improvements. However, if and when the City (at its sole expense) constructs a sidewalk on Merriewood Drive from the Burton Valley School Driveway to Sandalwood Court ("Merriewood Sidewalk"), the Owner shall reimburse the City for the actual construction costs, as determined by competitive bid, to restore the Improvements (as that term is defined above). The construction of the Improvements shall be deferred until such time as the City Manager determines that there is no further reason to defer construction of the Improvements because their

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construction is necessary for the public health, welfare and safety or is necessary for the orderly development of the surrounding area. In that event, the City shall mail notice to the Owner and/or the current owner of the Property as shown on the latest adopted County assessment roll. The notice shall describe the Improvements to be paid for by the Owner and shall include copies of the bids received by the City showing the bid prices to be paid for the various items of work. Owner agrees to reimburse the City for the actual costs associated with the Improvements within thirty (30) days of receipt of the notice given by the City Engineer.

1.1 Quality of Work; Compliance With Laws and Codes. The construction of the Merriewood Sidewalk and the Improvements shall be in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, and shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as the Americans with Disabilities Act, and all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2. Default; Notice; Remedies.

2.1 Notice. If Owner neglects, refuses, or fails to timely reimburse the City in accordance with this Agreement, City may at any time thereafter declare Owner to be in default or violation of this Agreement and make written demand upon Owner, to immediately remedy the default or violation ("Notice"). Owner shall remedy the default within thirty (30) days of the Notice.

2.2 Failure to Remedy; City Action. If the reimbursement required to remedy the noticed default is not diligently paid, the City may place a lien on the Property for the cost of constructing the Improvements. If City sues to compel performance of this Agreement, to recover the cost of completing the Improvements or to enforce the lien, Owner shall pay all reasonable attorney's fees, costs of suit and all other expenses incurred by City in connection therewith, and the attorney's fees, costs and other expenses shall also become a lien on the Property.

2.3 Other Remedies. This Section shall not apply if Owner has timely reimbursed the City for the Improvements and has complied with all obligations contained in this Agreement. No action by City pursuant to Section 2.0 et seq. of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

3. Administrative Costs. If Owner fails to reimburse the City for the costs of the Improvements within the time required by this Agreement, or if Owner fails to comply with any other obligation contained herein, Owner shall be liable to City for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

4. Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, nor any other related entitlement, permit, nor approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Owner.

5. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

6. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

7. Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Owner include all personnel, employees, agents, and subcontractors of Owner, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

8. Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

CITY:

City of Lafayette
3675 Mt. Diablo Blvd. #210
Lafayette, California 94549-1968
Attn: City Engineer

OWNER:

Desmond and Kathryn Allen
567 Merriewood Drive
Lafayette, California 94549

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

9. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

10. Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

11. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

12. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

13. Attorneys' Fees and Costs. Each Party hereto shall bear its own attorneys' fees, expenses and costs incurred with respect to the preparation of this Agreement. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs, which shall include, without limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (a) post judgment motions and appeals, (b) contempt proceedings, (c) garnishment, levy, and debtor and third party examination, (d) discovery, and (e) bankruptcy litigation. This section shall survive the termination or expiration of this Agreement.

14. Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the representatives of the parties hereto have executed this Deferred Improvement Agreement as of the date first above written.

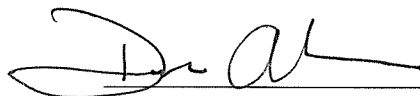
CITY:

CITY OF LAFAYETTE

Mike Anderson, Mayor

OWNER:

(Note: Owners' signatures must be notarized.)



ATTEST:

Joanne Robbins, City Clerk



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa

On 4-22-08

Date

before me, Joanne Lee Robbins, Notary

Here Insert Name and Title of the Officer

personally appeared

Desmond Allen

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

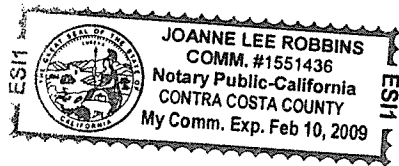
WITNESS my hand and official seal.

Signature

Joanne Lee Robbins

Signature of Notary Public

Place Notary Seal Above



OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
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Signer Is Representing: _____

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa }

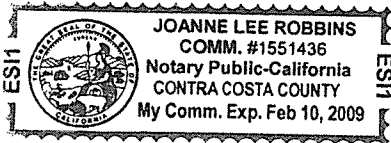
On 4-22-08 before me, Joanne Lee Robbins, notary
Date Here Insert Name and Title of the Officer

personally appeared Kathryn Allen
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature Joanne Lee Robbins
Signature of Notary Public

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Signer Is Representing: _____

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